

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

<p>CYCLONE USA, INC.,</p> <p style="padding-left: 100px;">Plaintiff,</p> <p style="padding-left: 100px;">v.</p> <p>LL&C DEALER SERVICES, LLC, et al.,</p> <p style="padding-left: 100px;">Defendant</p> <hr style="width: 40%; margin-left: 0;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. CV 03-992 AJW</p> <p>MEMORANDUM OF DECISION REGARDING CYCLONE USA'S MOTION FOR PREJUDGMENT INTEREST</p>
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This case was tried to the Court sitting without a jury. After the Court issued its ruling on liability, the parties briefed the issues relating to their respective requests for prejudgment interest. Subsequently, the parties filed a stipulation regarding the dates of accrual and rates of prejudgment interest pertaining to various claims. Eventually, Cyclone USA and LL&C entered into a settlement agreement resolving all claims between them. Cyclone USA was directed to state its position with respect to the effect of the settlement on any pending motions. As to this motion, Cyclone USA reported as follows:

1 The only remaining interest issues to be decided
2 by the Court - other than the stipulated amount
3 of interest on Sei Kim's contract claim -
4 pertains to the non-Poron profits. Those
5 interest calculations are set forth in Exhibit A
6 to Daryl Martin's Supplemental Declaration filed
7 on April 30, 2008.

8 [Plaintiff's Statement Regarding Pending Motions, at 3].

9 "[P]rejudgment interest is a substantive aspect of a
10 plaintiff's claim, rather than a merely procedural mechanism." In re
11 Exxon Valdez, 484 F.3d 1098, 1101 (9th Cir. 2007). Therefore, state
12 law governs the applicability of prejudgment interest on all state
13 claims and federal law governs the applicability of prejudgment
14 interest on all federal claims. In re Exxon Valdez, 484 F.3d at 1101
15 ("[S]tate law applies to [a] claim for prejudgment interest under
16 state law unless federal law preempts it.").

17 The Court adopts the parties' stipulation with respect to the
18 award of prejudgment interest on the following claim:

19 The amount of prejudgment interest accrued on
20 Sei Kim's breach of contract claim is \$163,710
21 through May 20, 2008, and prejudgment interest
22 accrues from that date at the rate of \$69.04 per
23 day.

24 [Stipulation Regarding Prejudgment Interest, at 2].

25 In awarding Cyclone USA damages for LL&C's and Sei Kim's
26 violations of the Lanham Act, the Court left open the issue of
27 Cyclone USA's entitlement to prejudgment interest. [See Memorandum
28 of Decision, at 23, 25, 53-54].

1 Where a federal right has been violated, courts have held that
2 "prejudgment interest should be presumptively available"
3 Gorenstein Enters., Inc. v. Quality Care-USA, Inc., 874 F.2d 431,
4 436 (7th Cir. 1989). While the Lanham Act does not mandate an award
5 of prejudgment interest, "federal common law authorizes the award of
6 such interest in appropriate cases to victims of violations of
7 federal law." Gorenstein Enters., Inc., 874 F.2d at 436. Some courts
8 have adopted "a preference, if not a presumption, for prejudgment
9 interest" in the context of federal claims. United Phosphorus, Ltd.
10 v. Midland Fumigant, Inc., 205 F.3d 1219, 1236 (10th Cir. 2000)
11 (reversing the district court's denial of prejudgment interest on
12 claims arising from violations of the Lanham Act). Others take a
13 more balanced view. Am. Honda Motor Co. v. Two Wheel Corp., 918 F.2d
14 1060, 1064 (2d Cir. 1990) ("Although Section 1117(a) does not
15 provide for prejudgment interest, such an award is within the
16 discretion of the trial court and is normally reserved for
17 'exceptional cases.'"). In the Ninth Circuit, "an award of pre-
18 judgment interest in a case under federal law is a matter left to
19 the sound discretion of the trial court." Twin City Sportservice,
20 Inc. v. Charles O. Finley & Co., Inc., 676 F.2d 1291, 1310 (9th Cir.
21 1982), cert. denied, 459 U.S. 1009 (1982).

22 As previously explained, the trademark infringement, trademark
23 counterfeiting, and other Lanham Act violations committed by LL&C
24 and Sei Kim damaged Cyclone USA and were far from innocent or
25 inadvertent. [See Memorandum of Decision, at 6-10, 13-14, 21-22, 28-
26 29, 50-52]. An award of prejudgment interest is necessary to provide
27 Cyclone USA with an adequate monetary remedy. Therefore, Cyclone
28 USA is entitled to prejudgment interest with respect to its claims

1 under the Lanham Act.

2 In awarding prejudgment interest, "[a] trial court is afforded
3 wide latitude in the selection of interest rates." Uniroyal, Inc. v.
4 Rudkin-Wiley Corp., 939 F.2d 1540, 1545 (Fed. Cir. 1991). The Ninth
5 Circuit, however, strongly favors the Treasury bill rate:

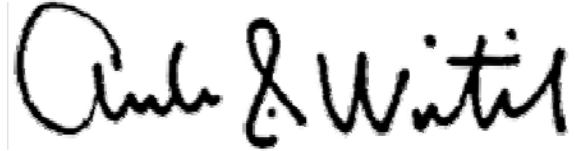
6 [T]he measure of interest rates prescribed for
7 post-judgment interest in 28 U.S.C. § 1961(a)
8 is also appropriate for fixing the rate for
9 pre-judgment interest in cases . . . where pre-
10 judgment interest may be awarded, unless the
11 trial judge finds, on substantial evidence,
12 that the equities of the particular case
13 require a different rate.

14 Western Pac. Fisheries, Inc. v. SS President Grant, 730 F.2d 1280,
15 1289 (9th Cir. 1984). See also Blanton v. Anzalone, 813 F.2d 1574,
16 1576 (9th Cir. 1987) ("[S]ubstantial evidence must support the
17 district court's decision to depart from the Treasury bill rate.").

18 Because neither party has suggested the use of a rate other
19 than the one year constant maturity Treasury yield, the Court adopts
20 that rate. The prejudgment interest awarded to Cyclone USA is fixed
21 at a rate equal to the post-judgment interest rate provided by 28
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1 U.S.C. § 1961(a). That rate shall be applied in the manner
2 suggested by Cyclone USA's expert. [See Supplemental Declaration of
3 Daryl Martin, Ex. A].

4 DATED: May 24, 2010

A handwritten signature in black ink, reading "Andrew J. Wistrich". The signature is written in a cursive, flowing style. The first name "Andrew" is written with a large, looped 'A'. The middle initial "J." is written with a small 'J' followed by a period. The last name "Wistrich" is written with a large 'W' and a trailing flourish.

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7 ANDREW J. WISTRICH
United States Magistrate Judge
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